IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FREDERICK BOUNASISSI and STACEY BOUNASISSI, Plaintiff, v. PHH MORTGAGE SERVICES, Defendant.	CIVIL ACTION NO. *Civil Action* **COMPLAINT**

COMPLAINT

Plaintiffs, Frederick Bounasissi and Stacey Bounasissi (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby submit this Complaint against Defendant, PHH Mortgage Services ("Defendant"), and in support thereof, states as follows:

PARTIES

1. Plaintiffs are individual residents of the State of New Jersey with their primary residential address located at 5 Richland Drive, Mount Laurel, New Jersey 08054.

2. Upon information and belief, Defendant is a company organized and existing pursuant to the rules and laws of the State of New Jersey with its principal place of business located at 1 Mortgage Way Mount Laurel, NJ 08054.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, as this matter involves federal claims arising under federal law, thereby invoking the Court's federal question jurisdiction.

4. This Court has personal jurisdiction over Defendant, as Defendant has had the requisite minimum contacts with the State of New Jersey and Defendant has and continues to regularly conduct business in the State of New Jersey.

5. Venue lies in the United States District Court for the District of New Jersey, as a substantial part of the property that is the subject of this action is located in the State of New Jersey.

6. Further, venue lies in the United States District Court for the District of New Jersey, as a substantial part of the events or omissions upon which Plaintiff's claims are based has occurred in the State of New Jersey.

FACTS COMMON TO ALL COUNTS

7. On January 18, 2006, Plaintiffs executed and delivered to Merrill Lynch Credit Corporation ("Merrill Lynch") a note in the amount of $655,000.00 (the "Note").

8. On January 18, 2006, Plaintiffs executed and delivered a mortgage (the "Mortgage") to Mortgage Electronic Registration Systems, Inc. ("MERS"), against real property located at 5 Richland Drive, Mount Laurel, New Jersey 08054 (the "Property") to secure the Note.

9. Defendant alleges that it was the servicer of the Mortgage and that therefore, it has a right to foreclose on the Property.

10. On January 25, 2013, a Complaint for Foreclosure was filed against Plaintiffs in the Superior Court of New Jersey, Burlington County, Chancery Division.

11. In its Complaint, it was alleged that Plaintiffs defaulted on their obligations under the Note and Mortgage.

12. On August 2, 2013 a modification application was submitted.

13. Then, 4 days later on August 6, 2013, a new case manager was assigned named Stella Accoo.

14. A denial was allegedly sent out on September 18, 2013.

15. However, on November 2, 2013 the Defendant's representative requested more documents for the modification process to be continued.

16. More documents were again requested on January 14, 2014.

17. They were submitted and then on February 17, 2014 it was confirmed that the application was complete.

18. On March 6, 2014 the modification was denied because "the funds were available to bring the loan current".

19. Then, on March 18, 2014 it was denied in writing by a representative of the Defendant Miguel Brown because there were not enough funds for the modification to proceed.

20. These two reasons were clearly contradictory. And as such, caused confusion for the Plaintiffs.

21. Because of this was confusion, Plaintiffs reached out to Miguel Brown again and Plaintiffs were told again the modification was denied because there were not enough funds for the modification to proceed.

22. Additionally, it is requested judicial notice be taken that the rules regarding loan modifications, specifically rule 1024.41 was modified on January 20, 2014.

23. As such, any modifications that were started before that time were not held against the "only one modification" rule.

24. As such, the aforementioned modification should not be held against the Plaintiffs.

25. Additionally, according to these revisions, once there is a new servicer assigned, a new modification can be filed.

26. On or about May 7, 2014, Defendant herein obtained a Final Judgment for Foreclosure against Plaintiffs in the underlying foreclosure matter.

27. On or about May 7, 2014, this Superior Court of New Jersey issued a Writ of Execution for Defendant herein against the Property.

28. On July 3, 2014 a Sheriff Sale was scheduled.

29. On July 14, 2014, Defendant's representative again agreed to "restart" the loan modification process and a complete package was sent out on July 16, 2014.

30. On September 24, 2014 A new Notice of Intent was sent out by Defendant PHH Mortgage (PHH).

31. This was the first notice received from PHH.

32. PHH was contacted and they requested a new loan modification package.

33. A complete package was sent out to PHH on October 2, 2014.

34. In fact, PHH had **not** reviewed a modification previously.

35. Particularly, on or about November 24, 2014, pursuant to Defendant's request, Plaintiffs submitted supplemental documents for the loan modification application to Defendant's servicer.

36. As a result, Defendant should have cancelled the foreclosure sale in this matter, as there was a loan modification application pending at that time.

37. It is undeniable that October 2, 2014 was **sixty-two days** prior to the December 4, 2014 sale date.

38. Despite the loan modification negotiations and Plaintiffs' fully submitted application, Defendant nevertheless sold the Property at foreclosure sale on or about December 4, 2014.

39. It is without question that rule 1024.41 calls for a full review and the sheriff sale to be adjourned when a package is submitted more than thirty seven days prior to the sale, as was the case here.

40. It is likely that the sale moved forward because PHH, Defendant and Defendant's attorneys failed to communicate in regards to staying the sale.

41. Additionally, there was no new notice sent to Plaintiffs regarding the new sale date.

42. However, it appears that Defendant never informed their servicer not the Plaintiffs of this as the parties continued to be in active loan modification discussions and negotiations.

43. On January 14, 2015, Aubrey Welsh at PHH stated the package needed additional information.

44. This was sent in on January 22, 2015.

45. On February 4, 2015, a new case manager was assigned named Katherine McNeil and new "team leader" was assigned named Cibele Moule.

46. Plaintiff emailed a representative of PHH on February 18, 2015 and was told nothing else is needed.

47. On February 23, 2015, a new case manager was assigned named Robin Forchion.

48. On March 23, 2015 Francis Ortiz emailed Plaintiffs that PHH has received the documents.

49. On March 24, 2015 Robin Forchion emailed Plaintiffs that PHH has received the documents.

50. On March 25, 2015, Katherine McNeil emailed Plaintiffs she now only wants communication via phone.

51. On March 25, 2015, Cibele Moule emailed Plaintiffs that PHH has received the documents.

52. On March 26, 2015, Joshua Rodriquez emailed Plaintiffs that PHH has received the documents.

53. On April 8, 2015, Cibele Moule emailed Plaintiffs that PHH needed an updated hardship letter.

54. On April 8, 2015, Cibele Moule received the updated hardship letter.

55. On April 8, 2015, Cibele Moule stated the documents were under review.

56. On April 10, 2015, Joseph Crump, another representative of PHH sent the Plaintiffs another new Modification application package.

57. On April 10, 2015, Eleanor T. Smith sent Plaintiffs a "Correspondence letter".

58. Finally, on April 16, 2015, Cibele Moule claims she can not help the Plaintiffs because they had been foreclosed on.

59. That was the first time a representative of Defendant had may mention of the sale taking place to the Plaintiffs.

60. On April 20, 2015, Joshua Rodriquez emailed Plaintiffs that PHH has received the documents.

61. On April 28, 2015, a new deed was recorded.

62. On June 1, 2015, Charles Hamilton send a correspondence that PHH has received the documents.

63. Finally, on October 20, 2015 the writ of possession was sent to the Plaintiffs.

COUNT ONE
VIOLATION OF RESPA – LOAN MODIFICATION

64. Plaintiffs hereby incorporate by reference all preceding allegations as if fully set forth at length herein.

65. Defendant is in direct violation of the Real Estate Settlement Procedures Act ("RESPA") and RESPA's Regulation X specifically, 12 CFR 1024.41(g) which states:

If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless: (1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied; (2) The borrower rejects all loss mitigation options offered by the servicer; or (3) The borrower fails to perform under an agreement on a loss mitigation option.

66. Additionally, the official interpretation states that:

Loss mitigation applications submitted 37 days or less before foreclosure sale. Although a servicer is not required to comply with the requirements in § 1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v) to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage *loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.*

67. Despite the requirements of RESPA and Regulation X, Defendant has failed to properly review Plaintiffs' loan modification submissions in a timely manner and in good faith.

68. Further, Defendant has failed to provide a valid response to Plaintiffs' loan modification submissions in accordance with RESPA and Regulation X.

69. Specifically, Plaintiffs submitted a loan modification application to Defendant as stated above over thirty seven days before the sale was scheduled.

70. Finally, Defendant has made no final decision on Plaintiffs' loan modification application and/or debt restructuring request, rather simply requesting supplemental documents.

71. Rule 1024.41 specifically makes it clear that requesting supplemental documents does not mean a complete package was not submitted, it simply means clarification is desired as stated in Paragraph 41(b)(2)(i)(B).

"1. Later discovery of additional information required to evaluate application. Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in § 1024.41(b)(1). See § 1024.41(c)(2)(iv) addressing facially complete applications."

72. As such, there is no question that the loan modification package submitted in this case was prior to the thirty seven day deadline.

73. Accordingly, Defendant is in violation of RESPA and Regulation X.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendant, as follows:

a. Awarding Plaintiffs actual damages against Defendant;
b. Awarding Plaintiffs damages for emotional distress against Defendant;
c. Awarding Plaintiffs attorneys' fees and costs against Defendant;
d. Awarding Plaintiffs punitive damages against Defendant;
e. Imposing any other appropriate monetary sanctions against Defendant; and
f. Any other relief that this Court deems just and proper.

COUNT TWO
VIOLATION OF RESPA – FORECLOSURE SALE

74. Plaintiffs hereby incorporate by reference all preceding allegations as if fully set forth at length herein.

75. Defendant is in direct violation of the Real Estate Settlement Procedures Act ("RESPA") and RESPA's Regulation , specifically 12 CFR 1024.41(g).

76. Specifically, Plaintiffs submitted a loan modification application to Defendant as stated above more than the thirty seven days required, even though Plaintiffs did **not** know about the sale since they had received no actual notice of the new date.

77. Despite the requirements of RESPA and Regulation X and despite the pending loan modification application, Defendant has failed to review Plaintiff's loan modification submissions and has, instead, sold the Property at foreclosure sale during an active modification review period.

78. Plaintiffs were damaged by this sale because of the clear loss of their primary property, severe emotional distress on behalf of both Plaintiffs and their three children as well as a loss of all investments made into the property and the equity they had in the property.

79. Accordingly, Defendant is in violation of RESPA and Regulation X.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment in her favor and against Defendant, as follows:

a. Awarding Plaintiffs actual damages against Defendant;
b. Awarding Plaintiffs damages for emotional distress against Defendant;
c. Awarding Plaintiffs attorneys' fees and costs against Defendant;
d. Awarding Plaintiffs punitive damages against Defendant;
e. Imposing any other appropriate monetary sanctions against Defendant; and
f. Any other relief that this Court deems just and proper.

COUNT THREE
UNJUST ENRICHMENT

80. Plaintiff hereby incorporates by reference all preceding allegations as if fully set forth at length herein.

81. In establishing a claim for unjust enrichment, "a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust." *VRG Corp. v. GKN Realty Corp.,* 135 NJ. 539, 554 (1994).

82. As a result of its misrepresentations, Defendant has been unjustly enriched at the expense of Plaintiff.

83. It is clear that Defendant either through intentional actions or gross negligence gained possession of Plaintiffs' house through a Sheriff sale that took place.

84. Defendant sold the property to itself and failed to mention this to Plaintiffs or its servicer for months, delaying the change Plaintiffs could have had to try and remedy the situation, even while Plaintiffs were trying to do exactly that.

85. It is clear on its face that Defendant must have realized the sale took place, but failed to notify the servicer in what can only be considered as an intentional or grossly negligent action that resulted in Plaintiff's loss of their home.

86. There was no actual contract at this time that controlled the loan modification negotiations, as no modification had been offered at that time.

87. In addition, as the loan modification negotiations were **not** part of the mortgage, that was not the controlling contract and as such, there was no controlling contract for this matter.

88. Accordingly, Defendant received a benefit through the severely undervalued purchase of Plaintiff's home and retaining that house would be an unjust benefit to the Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment in her favor and against Defendant, as follows:

a. Awarding Plaintiffs actual damages against Defendant;
b. Awarding Plaintiffs damages for emotional distress against Defendant;
c. Awarding Plaintiffs attorneys' fees and costs against Defendant;
d. Awarding Plaintiffs punitive damages against Defendant;
e. Imposing any other appropriate monetary sanctions against Defendant; and
f. Any other relief that this Court deems just and proper.

COUNT FOUR
THEFT, CONVERSION, FRAUD, DURESS, AND UNDUE INFLUENCE

89. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

90. Defendant engaged in unconscionable commercial practices, deception, theft, unlawful taking and conversion, fraud, false pretense, false promise and/or misrepresentations with regard to the subject loan, specifically but not by way of limitation:

a. Fraudulently representing that the Plaintiffs' loan modification would be given fair, due and appropriate evaluation as required by law, knowing at all times that Defendants had no intention of doing so – all of which was in violation of 12 USC Section 2601 et seq. implemented by Regulation Z, which is found at 24 C.F.R. § 3500, as well as 12 CFR Part 1024 et seq., specifically but not by way of limitation, Section 1024.41, **Loss Mitigation Procedures,** and New Jersey common law;

b. Fraudulently representing that the Plaintiffs' loan modification would be given fair, due and appropriate evaluation as required by law, knowing at all times that Defendants had no authority and standing to do so – all of which was in violation of 12 USC Section 2601 et seq. implemented by Regulation Z, which is found at 24 C.F.R. § 3500, as well as 12 CFR Part 1024 et seq., specifically but not by way of limitation, Section 1024.41, **Loss Mitigation Procedures,** and New Jersey common law;

c. Failing to inform the Plaintiffs and the Court that the Defendant had no authority or standing to proceed with a foreclosure Sheriff Sale, all in an attempt to unlawfully take and convert the Plaintiffs' property

91. Alternatively, and or additionally, Defendant, engaged in acts of omission, including but not limited to knowing concealment, suppression in omissions of material facts in connection with the subject loan.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT FIVE
VIOLATIONS OF THE TRUTH-IN-LENDING ACT

92. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

93. The transactions alleged in Background is a consumer transaction that involved the Defendant, as a creditor lending money to the Plaintiffs.

94. At all times relevant Defendant, were a creditor under the Federal Truth-in-Lending Act 15 U.S.C.A. § 1601 et. seq. (TILA) that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Plaintiffs

95. Defendant, failed to comply with TILA by failing to provide Plaintiffs with proper inaccurate written rescission notice and accurate material disclosures as required by TILA, including accounting upon demand, explanation of application of payments and monthly statements

96. The TILA violations Complaint if herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. §1641(e).

97. In light of these violations, Plaintiffs are entitled to have the Note and Mortgage declared null and void.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT SIX
FAIR DEBT COLLECTION PRACTICES ACT

98. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

99. Defendant has not provided Plaintiffs with statements, an accounting, payoff and reinstatement or debt verification, and/ or other information as was requested according to the fair debt collection practices act, 15 U.S.C. § 1601, et. seq.

100. Further, the "Notice of Fair Debt Collections Practices Act" has expired. This is a violation of 15 U.S.C. 1601 and as such, the claims of Defendant should immediately be declared void.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT SEVEN
VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

101. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

102. At all times relevant and material hereto the Plaintiffs were consumers of the Defendant's goods and services and as such the conduct of the Defendant and the transaction was governed by the New Jersey Consumer Fraud Act N.J.S. A. 56:8-1 et seq.

103. At all times relevant and material hereto the Defendant did violate the New Jersey Consumer Fraud Act by engaging in deceptive and fraudulent practices, to wit:

a. Fraudulently representing that the Plaintiffs' loan modification would be given fair, due and appropriate evaluation as required by law, knowing at all times that Defendant had no intention of doing so – all of which was in violation of 12 USC Section 2601 et seq. implemented by Regulation Z, which is found at 24 C.F.R. § 3500, as well as 12 CFR Part 1024 et seq., specifically but not by way of limitation, Section 1024.41, **Loss Mitigation Procedures,** and New Jersey common law;

b. Fraudulently representing that the Plaintiffs' loan modification would be given fair, due and appropriate evaluation as required by law, knowing at all times that Defendant had no authority and standing to do so – all of which was in violation of 12 USC Section 2601 et seq. implemented by Regulation Z, which is found at 24 C.F.R. § 3500, as well as 12 CFR Part 1024 et seq., specifically but not by way of limitation, Section 1024.41, **Loss Mitigation Procedures,** and New Jersey common law;

c. Failing to inform the Plaintiffs and the Court that the Defendant had no authority or standing to proceed with a foreclosure Sheriff Sale, all in an attempt to unlawfully take and convert the Plaintiffs' property.

104. The actions of the Defendants, individually and/or jointly, were performed in direct contradiction to their promises of superior services and conduct, but instead for their own financial self-interests, in detriment to the rights and position of the Plaintiffs.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT EIGHT
BREACH OF CONTRACT

105. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

106. At all times relevant and material hereto the Defendant did breach the contractual terms of the loan/note by engaging in deceptive and fraudulent practices as hereinbefore set forth.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT NINE
WIRE FRAUD

107. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

108. At all times relevant and material hereto the Defendants did use electronic transmission, including fax, internet, money wire, in order to engage in deceptive and fraudulent practices, to wit: the deceptive, fraudulent and unlawful taking, theft and attempted conversion of Plaintiffs' property – all of which is in violation of 18 U.S. Code § 1343.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

COUNT TEN
VIOLATION OF REAL ESTATE SETTLEMENT PROCEDURES ACT 12 USC SECTION 2601 ET SEQ AND 12 CFR PART 1024 (REGULATION X)

109. Plaintiffs hereby incorporate by reference all preceding paragraphs as if set forth at length herein.

110. The lack of action on the Plaintiffs' application, including the lack of a denial was a violation of 12 USC Section 2601 et seq. implemented by Regulation Z, which is found at 24 C.F.R. § 3500, as well as 12 CFR Part 1024 et seq., specifically but not by way of limitation, Section 1024.41, **Loss Mitigation Procedures,** which requires the lender to, inter alia: "Provide

the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section." 12 CFR Part 1024.41 (c)(1)(i) and (ii), and 12 CFR Part 1024.41 (d).

111. At all times relevant and material hereto Defendant wrongfully attempted to pursue the Sheriff Sale when it was no longer the party in interest as formal filings clearly showed that it had sold or assigned its interest and, as such, did not have standing to pursue the Sale.

WHEREFORE, the Plaintiffs demand judgment against Defendant for damages, interests and costs of suit including:

a. Punitive and/or treble damages;

b. Damages as permitted by statute;

c. Counsel fees;

d. All other relief this Court deems necessary and just.

__/s/ Joshua Thomas, Esq.______________
Joshua Thomas, Esq.
Attorneys for Plaintiffs,
Frederick Bounasissi and Stacey Bounasissi

Dated: February 15, 2017